

April 16, 2004

**VIA EXPRESS MAIL NO. EV434215616US**

**EV434215616US**

Commissioner for Patents  
Mail Stop Petition  
Attn: Tom Hawkins  
P.O. Box 1450  
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765

Filing Date: 01/31/00

Title: Software Analysis System Having An Apparatus For Selectively Collecting  
Analysis Data From A Target System Executing Software Instrumented With Tag  
Statements And Method For Use Thereof

Inventor: Derrick Jason Birum

Assignee: Metrowerks Corporation

Examiner: Chameli Das

Group: 2122

Atty Docket No.: 650059.420

**RECEIVED**

APR 19 2004

**OFFICE OF PETITIONS**

**#17**

**RECEIVED**

APR 22 2004

**Technology Center 2100**

Dear Commissioner:

Please find enclosed for filing the following:

1. Petition To Withdraw Holding of Abandonment Based On Failure To Receive Office Action; and
2. A return postcard for confirmation of receipt.

We believe that no fees are due related to the filing of the above-referenced Petition. If, however, the Commissioner deems that fees are due, then the Commissioner is hereby authorized to debit the costs of such fees to Deposit Account No. 50-0897 on which account the undersigned is authorized to charge.

Please return the enclosed postcard to confirm receipt of the above-referenced items..

Yours very truly,



J. Scott Denko  
Registration No. 37,606

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/494,765

Title: Software Analysis System Having An Apparatus For Selectively Collecting Analysis Data From A Target System Executing Software Instrumented With Tag Statements And Method For Use Thereof

**RECEIVED**

Inventor: Derrick Jason Birum

APR 19 2004

Assignee: Metrowerks Corporation

**OFFICE OF PETITIONS**

Filing Date: 01/31/00

CERTIFICATE OF MAILING UNDER 37 CFR §1.10  
I hereby certify that this paper or fee is being deposited with the United States Postal Service via Express Mail EV434215616US addressed to Assistant Commissioner for Patents, Mail Stop Petition, P.O. Box 1450, Alexandria, VA 22313-1450 on the 16<sup>th</sup> day of April, 2004.

  
Angelia Dedek

Assistant Commissioner for Patents  
Mail Stop Petition  
Attn: Tom Hawkins  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RECEIVED**

APR 22 2004

Technology Center 2100

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT  
BASED ON FAILURE TO RECEIVE OFFICE ACTION**

The Applicant respectfully petitions the U.S. Patent and Trademark Office to withdraw the holding of abandonment of Patent Application No. 09/494,765 under *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971) and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 O.G. 53 (Nov. 16, 1993).

Regarding the above-referenced application, the Applicant received a Notice of Abandonment mailed on April 8, 2004 which states as the cause of abandonment failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of a Notice of Allowance and Issue Fee Due. Neither the Applicant or Applicant's representative received a Notice of Allowance and Issue Fee Due in this matter.

REPLY AND STATEMENT

The Notice of Abandonment was mailed on April 8, 2004 and states as the cause of abandonment failure to timely pay a required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of a Notice of Allowance and Issue Fee Due. A copy of the Notice is attached as Exhibit "A".

The Applicant never received a Notice of Allowance and Issue Fee Due in this matter. A search of the file jacket and docket records maintained by the office of the Applicant's representative indicates that such Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered *had it been received* and docketed is attached as Exhibit "B".

The Applicant filed a "Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address" on October 29, 2003, which is attached as Exhibit "C". The filing of the Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address is evidenced by a copy of the return receipt postcard bearing the stamp of the United States Patent and Trademark Office indicating its receipt.

The Applicant hereby requests that a copy of the Notice of Allowance and Issue Fee due be promptly transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292 so that Applicant may submit the required Issue Fee and Publication Fee, if applicable.

PETITION FEE

The Applicant believes that no fee is due with the filing of this Petition. However, if the Commissioner determines that such a fee is due, the Commissioner is hereby authorized to debit such fees from the firm Deposit Account No. 50-0897 on which the undersigned is authorized to sign.

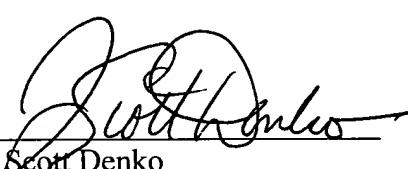
SUMMARY

The Commissioner is hereby authorized to charge any fee deficiency to our deposit account 50-0897.

The Applicant respectfully requests an early decision on this Petition and appreciates the attention of the Petitions Office and the Petitions Examiner. The Applicant asks that the Decision on Petition be transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292. The Applicant additionally requests a copy of the Notice of Allowance and Issue Fee Due be transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292. Should the Petitions Examiner have any questions upon which the Applicant's attorney may be able to provide assistance, a phone call to the Applicant's attorney at the phone number listed below would be welcome.

Respectfully submitted,

By:

  
J. Scott Denko  
Attorney for Applicant  
Registration No. 37,606

ANDREWS KURTH, L.L.P.  
111 Congress Ave., Suite 1700  
Austin, Texas 78701-4069  
(512) 320-9259 (office)  
(512) 320-9292 (facsimile)

Date: April 16, 2004



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/494,765	01/31/2000	Derrick Jason Birum	120073.420	3907
36485	7590	04/08/2004	EXAMINER	
J. SCOTT DENKO ANDREWS & KURTH LLP 111 CONGRESS AVE., SUITE 1700 AUSTIN, TX 78701			DAS, CHAMELI	
			ART UNIT	PAPER NUMBER
			2122	13
DATE MAILED: 04/08/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Date Received: 4/15/04  
Date Due: \_\_\_\_\_  
Docketed by: \_\_\_\_\_

Exhibit A



UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
89/494 765			

EXAMINER

ART UNIT

PAPER NUMBER

13

DATE MAILED:

**NOTICE OF ABANDONMENT**

This application is abandoned in view of:

ABANDONMENT  
CONTACT PERSON IS:  
TOM HAWKINS  
305-8380

- Applicant's failure to timely file a proper reply to the Office letter mailed on \_\_\_\_\_.
- A reply (with Certificate of Mailing or Transmission of \_\_\_\_\_) was received on \_\_\_\_\_ which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
- A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
- A reply was received on \_\_\_\_\_, but it does not constitute a proper reply, or a *bona fide* attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in the last box below).
- No reply has been received.
- Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
- The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85) (or Notice of Publication Fee Due).
- The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required, by 37 CFR 1.18(d) is \$\_\_\_\_\_.
- The issue fee and publication fee, if applicable, have not been received.
- Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTOL-37).
- Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
- No corrected drawings have been received.
- The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all the applicants.
- The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon filing of a continuing application.
- The decision by the Board of Patent Appeals and Interferences rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
- The reason(s) below: \_\_\_\_\_

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

**Respond to the Notice of Abandonment by one of the following:**

**Petition To Withdraw Holding of Abandonment (See MPEP 711.03(c) I) and 37 CFR § 1.181) No fee required**

Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR § 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action. Any petition under 37 CFR § 1.181, to withdraw the holding of abandonment not filed within 2 months of the mail date of a Notice of Abandonment may be dismissed as untimely under 37 CFR § 1.181(f).

In order for a petition to be granted, the evidence must be sufficient according to one of the following standards:

- 37 CFR § 1.8(b) Certificate of Mailing
- 37 CFR § 1.10 "Express Mail" mailing
- MPEP 503 Postcard Receipt as Prima Facie Evidence

Petition To Withdraw Holding Of Abandonment should be addressed as follows:

By mail:                   Commissioner For Patents, P.O. Box 1450, Mail Stop: Issue Fee, Alexandria, VA  
                                 22313-1450

By facsimile:   703-305-8755 or 703-305-4372

**Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action (See MPEP 711.03(c) II). No fee required**

Where an applicant contends that the original Notice of Allowance and Issue Fee Due was never received. If adequately supported, the Office may grant the petition and remail the Office action. The showing required establishing non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petition should be addressed to the Technology Center handling the application as follows:

By mail:                   Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450  
                                 (Mark attention of a particular office or individual)

By facsimile:   Technology Center numbers posted at <http://www.uspto.gov/september1/faxnotice.htm>

**Petition To Revive An Abandoned Application (See MPEP 711.03(c) III)**

Where there is no dispute as to whether an application is abandoned (e.g. the applicant's contentions merely involve the cause of abandonment) a petition under 37 CFR § 1.137 (a) unavoidable or (b) unintentionally (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

Petitions under 37 CFR § 1.137 should be addressed to the Office of Petitions as follows:

By mail:                   Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450

By hand:                   Crystal Plaza 4, Rm. 3C23, 2201 Clark Place, Arlington, VA

By facsimile:   703-308-6916

Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR § 1.137(a) and Unintentionally Under 37 CFR 1.137(b), forms available at USPTO website – <http://www.uspto.gov>

Note: Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment.

As of 4/12/04

METROWERKS PATENT DOCKET

	Appl. No.	Filing Date	US Patent No	Inventors	Status - Last Action	Action Needed
Software Analysis System Having an Apparatus for Selectively Collecting Analysis Data From a Target System Executing Software Instrumented with Tag Statements and Methods for Use Thereof (420)	09/494,765	1/31/00		Birum; Ellis; Tinker	10/28/03 - Filed Amendment and Response 10/29/03 - Filed Revocation of POA with New POA and Change of Correspondence Address 3/30/04 - Rec'd Notice of Acceptance of POA from PTO	

Exhibit B

**PATENT APPLICATION INDEX**

Docket No.	650059420	Client Ref. No.		
Inventor:	Derrick Jason Birum, Richard Donald Ellis and Jeffrey Lee Tinker			
Invention Title:	SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF			
U.S. Filing Date:	January 31, 2000			
U.S. Application No.:	09/494,765			
Examiner:		Phone No. 0		
Art. Unit:	2762			
File History:				
Small Entity:	NO			
Assigned To:	Metrowerks, recorded on 04/28/03, at Reel 013609, Frame 0862			
General Authorization Filed:	January 31, 2000			
	Document	Date Filed with PTO	Date Mailed from PTO	Due Date
1.	Application (w/ Decl. Assign., General Authorization and Information Disclosure Statement)	01/31/2000		
2.	Request for Refund and Small entity Statement	03/15/00		
3.	Acknowledgement of Request for Refund		03/28/00	
4.	Recorded Assignment		04/18/00	
5.	FILING RECEIPT		04/25/00	
6.	European Search Report rcvd from foreign associate		06/20/01	08/20/01
7.	Supplemental Information Disclosure Statement w/EP Search	08/15/01		
8.	Supplemental IDS with 12 References	06/01/03		
9.	Recorded Assignment -Assigned to Metrowerks	04/28/03		
10.	Office Action	04/28/03	07/28/03	
11.	Petition for extension of time; amendment & response	10/28/03		10/28/03
12.	Recalculation of filing Atty with New filer Atty in <del>name</del>	10/25/03		
13.	Change of Correspondence Address		4/8/04	
14.	Notice of Abandonment		3/30/04	
15.				
16.				
17.				
18.				
19.				
20.				
21.				
22.				
23.				

October 29, 2003

**BY EXPRESS MAIL**  
**AIRBILL NO. EV271668782US**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765  
Title: "Software Analysis System Having An Apparatus For  
Selectively Collecting Analysis Data From A Target  
System Executing Software Instrumented With Tag  
Statements And Method For Use Thereof"  
Filing Date: 01/31/00  
Inventor: Derrick J. Birum, et al  
Assignee: Metrowerks Corporation  
Examiner: A. Khatri  
Group: 2762  
Docket No. 120073.420

Dear Commissioner:

Enclosed for filing please find the following:

1. Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address; and
2. Statement Under 37 C.F.R. § 3.73(b).

Please return the postcard confirming your receipt of the enclosed materials.

Yours truly,

ANDREWS KURTH LLP

  
J. Scott Denko  
Exhibit "C"

Attorney Docket No.: 120073.420

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**Applicant(s):** Derrick J. BIRUM

**Group Art Unit:** 2762

**Application No.:** 09/494,765

**Examiner:** A. Khatri

**Filing Date:** January 31, 2000

**Confirmation No.:** 3907

**Title:** SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

STATEMENT UNDER 37 C.F.R. § 3.73(b)

Sir:

METROWERKS CORPORATION, a corporation operating under the laws of the state of Texas, is an owner of the patent application identified above by virtue of either:

A.  An assignment from the inventor(s) of the patent application identified above, a copy of which is attached.

OR

B.  A chain of title from the inventor(s), of the patent application identified above, to METROWERKS CORPORATION as shown below:

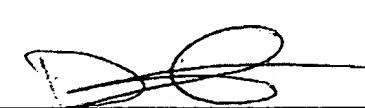
1. From: Derrick J. BIRUM; Richard D. ELLIS & Jeffrey L. TINKER  
To: APPLIED MICROSYSTEMS CORPORATION  
The document was recorded in the U.S. Patent and Trademark  
Office at Reel 010533, Frame 0680.

2. From: APPLIED MICROSYSTEMS CORPORATION  
To: METROWERKS CORPORATION  
The document was recorded in the U.S. Patent and Trademark  
Office at Reel 013609, Frame 0862.

The undersigned (whose title is supplied below) is empowered to sign this statement on behalf of METROWERKS CORPORATION.

Dated: 17/29/03

Signature:



Name: David Clinton  
Title: Vice-President of Segment Marketing  
Company name: **METROWERKS CORPORATION**

Attorney Docket No.: 120073.420

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**Applicant(s):** Derrick J. BIRUM, et al.

**Group Art Unit:** 2762

**Application No.:** 09/494,765

**Examiner:** A. Khatri

**Filing Date:** January 31, 2000

**Confirmation No.:** 3907

**Title:** SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY  
COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING  
SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR  
USE THEREOF

RECEIVED

APR 22 2004

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Technology Center 2100

REVOCATION OF POWER OF ATTORNEY WITH NEW POWER  
OF ATTORNEY AND CHANGE OF CORRESPONDENCE ADDRESS

Sir:

In the above-referenced patent application, I hereby revoke all prior powers of attorney and appoint the **ANDREWS KURTH LLP** attorneys and agents associated with Customer Number 36,485 to prosecute and maintain the patent application identified above and to transact all business in the Patent and Trademark Office connected therewith, including full power of association, substitution, and revocation.

Please address all telephone calls to: **J. Scott Denko** at (512) 320-9259.

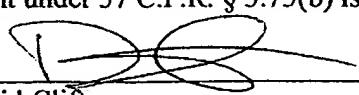
Please address all correspondence to **J. Scott Denko** at the address corresponding to Customer Number 36,485, currently:

J. Scott Denko  
ANDREWS KURTH LLP  
Suite 1700  
111 Congress Ave., Suite 1700  
Austin, Texas 78701

I am the:

Assignee of record of the entire interest. (Statement under 37 C.F.R. § 3.73(b) is attached).

Dated: 10/29/03

Signature:   
Name: David Clifton  
Title: Vice-President of Segment Marketing  
Company name: **METROWERKS CORPORATION**

On the date stamped hereon, the following was received in the U.S. Patent and Trademark Office:

Applicant: BIRUM

Docket No. 120073-420

Assignee: Metrowerks

Res. Atty: DENKO

Filing Date: 11/3/00

Date Mailed: 10-29-03

Serial No.: 09/1494,745

Date Due:

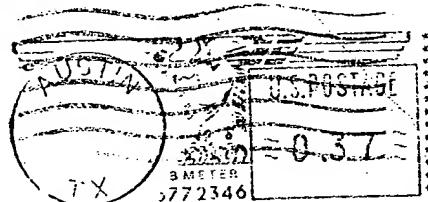
Title: Software Analysis System Having An Algorithm  
for Selectively Collecting Analysis Data

- Transmittal Letter
- Application PCT  Utility  Conversion  Prov  Div  Cont  CPA  Reissue
- Spec  pages; Claims  pages
- Drawings  pages; Abstract  pages
- Declaration  POA
- Form 1449, IDS
- Assignment w/ Recordation Cover Sheet
- Cert. of Mailing, First Class
- Authorization to Charge Deposit Account

50-0897

Cert. of Express Mail No. E 4271 668 78245

Other Statement Under 37 CFR 83.73(b)  
Re-Validation of POA with new POA and changing correspondence address



ATTN: INTELLECTUAL PROPERTY SECTION

ANDREWS & KURTH, L.L.P.

111 CONGRESS AVE., SUITE 1700

AUSTIN, TEXAS 78701-4069

*A. Decker*

RECEIVED

APR 22 2004

Technology Center 2100

*650059-420*

